

Enforcement of Judgment Debts

If you are unfortunate enough to have bad debts

A monetary Judgment is an Court order requiring a debtor to pay to a creditor a sum of money by a certain date. However, this may not be the end of the matter as the debtor may be unwilling to discharge the Judgment or, they/he/she may be unable to do so due to their financial circumstances. It will then be for the creditor to decide how best to enforce the Judgment and much will depend upon their knowledge of the debtor's financial status.

We set out below some of the alternatives that a creditor may adopt to enforce a Judgment debt and therefore obtain the moneys due to him.

1. Orders to obtain Information from a Debtor

This is not a method of enforcement in itself but enables a creditor to assess the debtor's financial status before deciding how best to enforce a Judgment against a debtor's property, assets or income.

On application the court will make an Order requiring the debtor to attend at court for questioning and requires the debtor to take to the hearing any documents he/she may have in support of his/her income/assets/liabilities. The Order contains a warning that, unless the debtor attends, a Committal Order may be issued for arrest.

It is necessary to serve the Order personally on the Debtor and we can instruct professional process servers for a fee in the region of £75.00 - £150.00.

An officer of the Court usually conducts the hearing where the debtor completes a standard questionnaire. To save costs we do not attend the hearing unless we are instructed to do so. If the debtor fails to attend the hearing, a Suspended Committal order is issued, suspended as long as the debtor attends at a further hearing, failing which he could be committed to prison for contempt of court. Further costs will be incurred in relation to the adjourned hearing as again, it is also necessary to arrange for personal service of the Suspended Committal order.

We estimate this firm's costs if this procedure is adopted to be in the region of £100 depending upon whether the debtor attends the first hearing. Unfortunately, save for the court issue fee, any additional costs incurred by you will not be recoverable from the debtor.

2. Warrant of Execution

(1) The County Court Bailiff

It is possible to issue a Warrant of Execution in the County Court for debts below £5,000. At the request of the Judgment creditor, the County Court will send a letter to the debtor warning that unless payment is received, a Warrant of Execution will be issued and that a Court Bailiff will attend at the debtor's premises to seize assets sufficient to satisfy the debt.

In the event that payment is not received, the Bailiff will attend the debtor's address and will either seize goods belonging to the debtor or take "walking possession" of goods.

Walking possession means that the Bailiff and the debtor will not remove the goods or otherwise dispose of them. This then gives the debtor a short period of time within which to discharge the debt or make acceptable proposals for payment to the Judgment creditor.

We estimate this firm's costs in the event this procedure is adopted to be in the region of £50.00 -£100.00. The court fee payable is £50.00. Unfortunately, save for the court issue fee, any additional costs incurred by you will be not be recoverable from the debtor.

(2) **The Sheriff's Office**

The High Court Sheriff is able to levy execution against Judgments in excess of £600 by the issue of a Writ of Fieri Facias (a High Court Warrant of Execution). The procedure for the issue of a Warrant of Execution can be dealt with either by this firm, in person or by the Sheriff's Lodgement Centre who arrange for the transfer of the county court proceedings to the High Court.

The Sheriff will take a percentage of the sums recovered from the debtor but otherwise, the procedure is similar to the instruction of a County Court Bailiff.

The difficulty with Warrants of Execution is that often a debtor is able to demonstrate that the goods located at the premises do not belong to him/her e.g. because they are owned by the debtors spouse or family, or subject to a Lease or HP Agreement. In those circumstances, the Bailiff/Sheriff would be unable to take possession of the goods. Further, certain goods are exempt from seizure such as tools, trade books and other items of equipment required in connection with the debtor's business. A further obstacle is that the Bailiff/Sheriff is unable to force entry to a residential address.

We estimate this firm's costs if you would like to proceed with this action to be in the region of £100.00 - £150.00 and in addition, there will be fees payable to the Sheriff's Lodgement Centre (if that option is pursued). Again, with exception of the court issue fees, any additional costs will not be recoverable from the debtor.

3. Third Party Debt Orders

Where a Judgment creditor is aware that the debtor is owed money by a third party, for instance, where the debtor's bank account is in credit, he/she may issue an application for a Third Party Debt Order. This Order requires a third party to pay that sum to the creditor by way of full or partial payment of the Judgment debt. Banks and Building Societies or other types of deposit taking institutions are ideal targets for this method of enforcement, as they are obliged to comply with the Order if the debtor's account is in credit. However, the Judgment creditor will first need to have knowledge of the debtor's bank or building society accounts. This can be achieved if the debtor has previously given you a cheque or following the procedure described in Item 1 above.

An application is made to the court and generally, an Interim Order will be granted without any notice being given to the debtor provided that sufficient evidence has been produced to demonstrate that the debt is due from the third party and it is properly attachable. The Interim Order is served on the Third Party giving notice of a hearing when a Final Third Party Debt Order may be made seeking payment of the debt by the Third Party to the creditor. At the hearing, the debtor may make representations opposing the grant of a final Order.

The Third Party is able to deduct his costs from the debt before payment. Only fixed costs are allowable to the Judgment creditor on the application, this means that any legal costs incurred over and above those fixed costs will be payable by the Judgment creditor.

This procedure is rather more costly than an application for an Order that the debtor attends court for questioning or a Warrant of Execution as usually a hearing will be listed and we would therefore be required to attend at court on your behalf. We estimate the firm's costs of this procedure to be in the region of £350.00 - £450.00 plus VAT plus the court fee of £50.

4. Attachment of Earnings

This procedure may be adopted only where the debtor is employed. An application is made for an order compelling the debtor's employer to make regular deductions from the debtor's earnings and to pay them into court. The application will be served on the debtor together with a questionnaire which the debtor must complete and provide a Statement of his Means. At any stage of the proceedings, the court may also require information as to earnings from the debtor's employer.

If the debtor completes and returns the Statement of Means, the court assesses the debtor's finances and makes an attachment of earnings order. Copies of the Order are then served on the debtor's employers. A hearing will not be listed unless the court considers it lacks sufficient information to make an order or the debtor objects to an order being made.

Should the debtor fail to complete the Statement of Means, the court will automatically issue an order compelling him/her to do so. The order will be endorsed with a warning to the debtor that a Committal Order may be made in the event of his failure to do so, this must be served on the debtor personally.

The court may order a hearing to seek further information from the debtor.

The final attachment of earnings order will specify an amount which the court decides the debtor may keep from his earnings - thus, if the debtor indicates a high outgoings figure, there may be little left to “attach” and the net result may be for example, that the employer is only ordered to pay a nominal sum deducted from the debtor’s net earnings.

We estimate the firm’s costs if this procedure is adopted to be in the region of £100.00. The court fee of £50. Unfortunately, save for the court fee and fixed costs that may be awarded to you, any legal costs incurred by you will not be recoverable from the debtor.

5. Charging Orders

Where a debtor has an interest in property whether land or securities, it is possible to obtain a Charging Order against that interest. The application for the Charging Order must be supported by evidence that the debtor has interest in property for example Office Copy Entries obtained from the Land Registry. On the issue of the application the court will make an Interim Charging Order and list a hearing where the debtor may attend to give reason why the Order should not be made final and stay in force. It is necessary to personally serve the Order together with copy of the application on the debtor. It is also necessary to serve a copy of the Order and any other party who may have an interest in the property for example a mortgage lender or a joint proprietor of the property. Once the debtor and any interested parties have been served a certificate of service is filed with the court confirming that the debtor and the interested parties have been duly served. Interested parties may also attend the hearing.

If the debtor at the hearing cannot satisfy the Judge that there is good reason why the Charging Order should not stay in force the Judge will make the Final Charging Order. If the application is successful you will be able to claim costs from the debtor limited to fix costs of £110.00 and the costs of disbursements you have incurred in relation to the application. These are likely to be the Court fee of £50.00, oath fees of £10.00 and the costs of registering the Charging Orders with the Land Registry of £80.00.

The benefit of registering the Charging Order with the Land Registry is that H.M. Land Registry will notify you of any attempts by the debtor to sell or deal with the property and in which event you may seek the payment of the Judgment debt, interest and costs from the proceeds of sale.

We estimate the firm’s costs if this procedure is adopted to be in the region of £350.00 - £450.00.

Once you have obtained a Final Charging Order you may consider applying to the court for an Order for Sale of the property. This procedure is more complicated and should you require further advice you need only contact us.

6. Bankruptcy/Liquidation

For outstanding Judgments in excess of £750 a Judgment Creditor may serve a Statutory Demand and subsequently issue a Bankruptcy Petition (against an individual) or a Winding-Up Petition (against a Company). There is a risk in embarking upon this procedure as the debtor may be

insolvent and the Judgment creditor may therefore see no recovery against the costs of the Petition.

We would be happy to advise in relation to the procedure and costs involved in the issue of Bankruptcy or a Winding-Up Petition. You need only contact us and we will arrange a mutually convenient appointment.

7. Costs : Generally

VAT will apply to our fees at the rate prevailing on delivery of our account.

It is difficult to estimate with any degree of certainty the level of fees to be incurred in relation to a litigious matter at the outset as these are usually governed by the manner in which other parties i.e. the Court, the debtor, H.M. Land Registry deal with our enquiries. Although, we have estimated the costs that are likely to be incurred in relation to the alternative methods of enforcement, our fees will depend upon the amount of time spent by us pursuing matters on your behalf.